

REMARKS

The foregoing amendment is submitted to more particularly set forth the type of unpleasant mouthfeel associated with the employment of a botanical in a hard boiled candy.

It is well known in the art that botanicals such as those set forth in claim 2 have an unpleasant mouthfeel induced by various chemical substances contained within the botanical.

The unpleasant mouthfeel associated with botanicals is described in the present application as inducing tingling, burning, drying and astringency (page 5, line 2). These effects experienced by the consumer are chemically induced because of various chemicals contained within the botanical which elicit the type of sensations described above. These sensations are to be distinguished from an unpleasant mouthfeel induced by the physical nature of the product being ingested. For example, an unpleasant mouthfeel can be generated by particles of a substance which have a rough, gritty texture. Texture modifying agents have long been used to alleviate unpleasant mouthfeel caused by the physical nature of an active agent. However, botanicals present an entirely different problem since an unpleasant mouthfeel is induced by chemicals contained within the botanical. The present invention addresses this particular problem.

Claims 1 and 28 of the application have been amended to indicate that the botanical has a chemically induced unpleasant mouthfeel. Support for this limitation can be gleaned from what is known in the art coupled with the description in the specification at the top of page 5 describing the effects of botanicals when orally ingested. One of ordinary skill in the art would understand that the unpleasant mouthfeel is chemically induced. Accordingly, it is respectfully submitted that the amendment to claims 1 and 28 find support based on the present application as filed coupled with the knowledge of one of ordinary skill in the art and entry of the amendment is therefore deemed proper and is respectfully requested.

The present invention addresses the chemically induced unpleasant mouthfeel associated with botanicals by incorporating one or more partially hydrogenated vegetable oils or saturated fats within a specific weight range. As we will show below, the claimed invention as amended is neither anticipated by nor rendered obvious over the prior art of record.

Referring to the Office Action, Applicants acknowledge that the anticipatory rejection based on Sheu, the anticipatory rejection based on Katsuragi and the rejection of claims 3 and 30 as obvious over Katsuragi in view of Raymont (see paragraph 15 of the Office Action) had been withdrawn. In this regard, it is noted that paragraph 12 of the Office Action (see page 4) repeats the rejection of claims 3 and 30 as obvious over Katsuragi in view of Raymont. Applicants assume that this ground of rejection is in error because the same rejection was withdrawn in

paragraph 15 of the Office Action. Accordingly, Applicants will address their comments to the rejection based on Carpenter set forth in paragraph 4 of the Office Action and the rejection based on Katsuragi set forth in paragraph 8 of the Office Action.

Carpenter (U.S. Patent No. 5,637,344) discloses a method of overcoming the unpleasant mouthfeel associated with cocoa powder. As noted in column 1, beginning at line 31, the reference discloses that cocoa powder prepared for hard candy has an unacceptable mouthfeel. This is because of the physical (not chemical) nature of cocoa powder which has a rough surface and a sandpaper-like feel to the tongue. Thus, the unpleasant mouthfeel is the result of the physical state of cocoa powder. It has a rough surface with jagged edges and therefore has a sandpaper-like affect on the tongue. Indeed, Carpenter states that column 1, lines 46-48 that the particles of cocoa powder have an irregular shape, with uneven, jagged and sharp edges which account for its unacceptable textural sensation.

Thus it is clear that the unpleasant mouthfeel associated with cocoa powder is the result of its physical state and particularly its rough surface. Carpenter overcomes this problem by subjecting the jagged cocoa powder particles to air jet milling to provide the cocoa powder particles with the proper geometry as described at the top of column 3. It is air jet milling which smoothes the edges of the cocoa powder to provide a product having a desirable mouthfeel. There is no teaching or suggestion in the reference of how to eliminate a chemically induced unpleasant

mouthfeel. Indeed, cocoa powder is not stated to have chemicals which can induce an unpleasant mouthfeel and quite to the contrary, the taste of cocoa powder is generally regarded as pleasant.

The air jet milling process described in Carpenter can not eliminate a chemically induced unpleasant mouthfeel. The air jet milling process serves to round the edges of the cocoa powder particles to arrive at smooth and probably smaller particles of cocoa powder. The smooth, smaller particles of cocoa powder do not have an unpleasant mouthfeel because a) the jagged edges are eliminated and b) there is nothing within cocoa powder which elicits a chemically induced unpleasant mouthfeel. Thus, the process disclosed in Carpenter does not treat the problem of unpleasant mouthfeel induced by chemicals contained within an active agent nor suggest a method of doing so.

In the present invention, the employment of an air jet mill will not solve the problem of chemically induced unpleasant mouthfeel because the smoothing of the edges of particles of a botanical does nothing to relieve the botanical of the chemicals which elicit an unpleasant mouthfeel. Thus, the present invention relies on an entirely different method of treating unpleasant mouthfeel and particularly chemically induced unpleasant mouthfeel by the use of certain types of oils. This feature of the claimed invention is neither taught nor suggested by Carpenter.

The Office Action points out that Carpenter optionally employs an oil to facilitate the mixing of the air jet milled cocoa powder and the amorphous candy

mass. It also adds perceived richness to the final product and improves the texture thereof. It is noted on page 6 of the Office Action the statement that the addition of oil reduces unpleasant mouthfeel or texture associated with the milled cocoa. However, it should be clear, that the texture referred to in this portion of the reference has to do with the physical state of the cocoa powder particles and not to any chemically induced unpleasant mouthfeel. One of ordinary skill in the art would not be led to the claimed invention because once it became apparent that air jet milling would not solve the problem, one would not be induced to use an oil for an entirely different unpleasant mouthfeel. It is therefore submitted that the present invention is neither anticipated by nor rendered obvious over Carpenter.

Claims 1, 2, 4-9, 28, 29, and 31-36 stand rejected as obvious over Katsuragi further in view of Oravainen. Katsuragi is stated to teach the addition of a bitterness-relieving agent comprising an ester of a mono/diglyceride with a carboxylic acid or salt which may be further dissolved in palm kernel oil. Oravainen is stated to teach adding oil to a hard candy to make the product more opaque. The Office Action concludes that it will be obvious to dissolve the ester in oil prior to addition to the hard candy of Katsuragi by dissolving the ester in the oil. The rejection is hereby traversed and reconsideration is respectfully requested.

The Katsuragi reference teaches a particular type of bitterness-relieving agent which is an ester obtained by the reaction of a mono/diglyceride with a carboxylic acid or salt. That is the sole bitterness-relieving agent. The palm oil is used to provide a convenient way of adding the bitterness-relieving agent to the candy

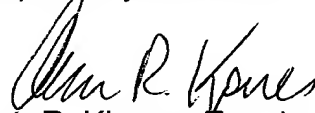
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composition. There is no teaching or suggestion in the reference that the oil in the amount employed in Katsuragi has any bitterness-relieving effect.

Katsuragi is not adding an oil to relieve bitterness. It is adding an entirely different type of bitterness-relieving agent in a liquid vehicle which happens to be palm oil. The contention that the oil has now become the bitterness-relieving agent is contrary to what is fairly taught in Katsuragi. It is therefore submitted that the present claims are in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,



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